

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

COURTNEY HUNT,)	
)	
Plaintiff,)	
)	
VS.)	No. 14-2482-JDT-tmp
)	
SHAWN BRADEN, ET AL.,)	
)	
Defendants.)	

ORDER PARTIALLY DISMISSING COMPLAINT AND
DIRECTING THAT PROCESS BE ISSUED AND SERVED

On June 20, 2014, Plaintiff Courtney Hunt, Tennessee Department of Correction prisoner number 516198, an inmate at the West Tennessee State Penitentiary (“WTSP”) in Henning, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983, accompanied by a copy of his trust account statement. (ECF Nos. 1 & 2.) Plaintiff filed an *in forma pauperis* motion on July 1, 2014. (ECF No. 5.) In an order issued on July 2, 2014, the Court granted leave to proceed *in forma pauperis* and assessed the civil filing fee pursuant to the Prison Litigation Reform Act, 28 U.S.C. §§ 1915(a)-(b). (ECF No. 6.) The Court issued an order on November 6, 2014, directing Plaintiff to sign his complaint. (ECF No. 7.) Plaintiff complied with that order on December 1, 2014. (ECF No. 8.) The Clerk shall record the Defendants as Shawn Braden and Willie Maharry, both of whom are correctional officers at the WTSP. (*See* ECF No. 1 at PageID 3.) Defendants are sued in their individual capacities. (*Id.* at PageID 4, ¶ 2.)

The complaint alleges that, on June 27, 2013, Plaintiff was working at the lawn mower shop when he got into a fight with another inmate. (*Id.* ¶ 4.) After the fight, Defendant Braden allegedly

began punching and hitting Plaintiff for no reason at all. (*Id.* ¶ 5.) Defendant Maharry allegedly stood by and observed the assault. (*Id.* at PageID 5, ¶ 12.) After the assault, Braden allegedly sent Plaintiff out to work in the hot sun. (*Id.* at PageID 4-5, ¶ 5.) Braden sent the other inmate to the infirmary and “said that a tree fell on him.” (*Id.* at PageID 5, ¶ 5.)

The next day, June 28, 2013, Plaintiff told Sergeant Andrey Smith, who is not a party to this action, that he needed to see a doctor because he was bleeding inside his ear. In response to Smith’s questions, Plaintiff told her what had happened and made a written statement. (*Id.* ¶ 6.) At the clinic, Plaintiff was diagnosed with a swollen temple and a “busted eardrum.” (*Id.* ¶ 9.) The nurse gave Plaintiff an antibiotic shot. (*Id.* ¶ 10.) Plaintiff was subsequently sent to the Lois N. DeBerry Special Needs Facility in Nashville, Tennessee. He continues to receive treatment on his eardrum. (*Id.* ¶ 11.)

After receiving treatment on June 28, 2013, Plaintiff was placed in the “hole.” (*Id.* at PageID 6, ¶ 14.) On July 3, 2013, Plaintiff was served with a disciplinary charge for fighting with another inmate. (*Id.* ¶ 15.) He asked the hearing officer to call Michael Upshaw as a witness. (*Id.* ¶ 16.) The complaint does not state the outcome of the disciplinary hearing or any punishment that was imposed.

Plaintiff complains the other inmate received medical care immediately after the fight but he did not. (*Id.* ¶ 17.) He seeks declaratory relief and compensatory and punitive damages. (*Id.* at PageID 7-8.)

The Court is required to screen prisoner complaints and to dismiss any complaint, or any portion thereof, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b); *see also* 28 U.S.C. § 1915(e)(2)(B).

In assessing whether the complaint in this case states a claim on which relief may be granted, the standards under Fed. R. Civ. P. 12(b)(6), as stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009), and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007), are applied. *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). “Accepting all well-pleaded allegations in the complaint as true, the Court ‘consider[s] the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief.’” *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681). “[P]leadings that . . . are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679; *see also Twombly*, 550 U.S. at 555 n.3 (“Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the nature of the claim, but also ‘grounds’ on which the claim rests.”).

“A complaint can be frivolous either factually or legally.” *Hill*, 630 F.3d at 470 (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). “Any complaint that is legally frivolous would *ipso facto* fail to state a claim upon which relief can be granted.” *Id.* (citing *Neitzke*, 490 U.S. at 328-29).

Whether a complaint is factually frivolous under §§ 1915A(b)(1) and 1915(e)(2)(B)(i) is a separate issue from whether it fails to state a claim for relief. Statutes allowing a complaint to be dismissed as frivolous give judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless. Unlike a dismissal for failure to state a claim, where a judge must accept all factual allegations

as true, a judge does not have to accept “fantastic or delusional” factual allegations as true in prisoner complaints that are reviewed for frivolousness.

Id. at 471 (citations and internal quotation marks omitted).

“*Pro se* complaints are to be held ‘to less stringent standards than formal pleadings drafted by lawyers,’ and should therefore be liberally construed.” *Williams*, 631 F.3d at 383 (quoting *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004)). *Pro se* litigants, however, are not exempt from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *see also Brown v. Matauszak*, 415 F. App’x 608, 612, 613 (6th Cir. Jan. 31, 2011) (affirming dismissal of *pro se* complaint for failure to comply with “unique pleading requirements” and stating “a court cannot ‘create a claim which [a plaintiff] has not spelled out in his pleading’” (quoting *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975))); *Payne v. Sec’y of Treas.*, 73 F. App’x 836, 837 (6th Cir. 2003) (affirming *sua sponte* dismissal of complaint pursuant to Fed. R. Civ. P. 8(a)(2) and stating, “[n]either this court nor the district court is required to create Payne’s claim for her”); *cf. Pliler v. Ford*, 542 U.S. 225, 231 (2004) (“District judges have no obligation to act as counsel or paralegal to *pro se* litigants.”); *Young Bok Song v. Gipson*, 423 F. App’x 506, 510 (6th Cir. 2011) (“[W]e decline to affirmatively require courts to ferret out the strongest cause of action on behalf of *pro se* litigants. Not only would that duty be overly burdensome, it would transform the courts from neutral arbiters of disputes into advocates for a particular party. While courts are properly charged with protecting the rights of all who come before it, that responsibility does not encompass advising litigants as to what legal theories they should pursue.”).

To state a claim under 42 U.S.C. § 1983,¹ a plaintiff must allege two elements: (1) a deprivation of rights secured by the “Constitution and laws” of the United States (2) committed by a defendant acting under color of state law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

Any claim arising from the disciplinary write-up, the disciplinary hearing, or the care provided by the WTSP medical staff is not asserted against any named Defendant. Those claims are DISMISSED for failure to state a claim on which relief may be granted, pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1).

It is unclear whether Plaintiff intends to sue the Defendants for failing to send him to the clinic after his fight with the other inmate and the assault. “The right to adequate medical care is guaranteed to convicted federal prisoners by the Cruel and Unusual Punishments Clause of the Eighth Amendment, and is made applicable to convicted state prisoners and to pretrial detainees (both federal and state) by the Due Process Clause of the Fourteenth Amendment.” *Johnson v. Karnes*, 398 F.3d 868, 873 (6th Cir. 2005). “A prisoner’s right to adequate medical care ‘is violated when prison doctors or officials are deliberately indifferent to the prisoner’s serious medical needs.’” *Id.* at 874 (quoting *Comstock v. McCrary*, 273 F.3d 693, 702 (6th Cir. 2001)); *see also Blackmore v. Kalamazoo Cnty.*, 390 F.3d 890, 895 (6th Cir. 2004) (“The Eighth Amendment forbids prison

¹ Section 1983 provides: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

officials from unnecessarily and wantonly inflicting pain on an inmate by acting with deliberate indifference toward the inmate's serious medical needs. . . . Prison officials' deliberate indifference violates these rights when the indifference is manifested by . . . prison guards in intentionally denying or delaying access to medical care for a serious medical need." (internal quotation marks, alterations and citation omitted)). "Although the right to adequate medical care does not encompass the right to be diagnosed correctly, [the Sixth Circuit] has long held that prison officials who have been alerted to a prisoner's serious medical needs are under an obligation to offer medical care to such a prisoner." *Johnson*, 398 F.3d at 874 (internal quotation marks and citation omitted).

The objective component of an Eighth Amendment claim requires that a prisoner have a serious medical need. *Blackmore*, 390 F.3d at 895; *Brooks v. Celeste*, 39 F.3d 125, 128 (6th Cir. 1994). "[A] medical need is objectively serious if it is one that has been diagnosed by a physician as mandating treatment *or* one that is so obvious that even a lay person would readily recognize the necessity for a doctor's attention." *Blackmore*, 390 F.3d at 897 (internal quotation marks and citations omitted); *see also Johnson*, 398 F.3d at 874. In this case, Plaintiff apparently suffered from a ruptured eardrum that required extensive medical treatment. The Court will assume, for purposes of this order, that the objective component of an Eighth Amendment claim has been satisfied.

To establish the subjective component of an Eighth Amendment violation, a prisoner must demonstrate that the official acted with the requisite intent, that is, that he or she had a "sufficiently culpable state of mind." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991). The plaintiff must show that the prison officials acted with "deliberate indifference" to a substantial risk that the prisoner would suffer serious harm. *Farmer*, 511 U.S. at 834; *Wilson*, 501 U.S. at 303; *Helling v. McKinney*, 509 U.S. 25, 32 (1993); *Woods v. Lecureux*, 110

F.3d 1215, 1222 (6th Cir. 1997); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996); *Taylor v. Mich. Dep’t of Corr.*, 69 F.3d 76, 79 (6th Cir. 1995). “[D]eliberate indifference describes a state of mind more blameworthy than negligence.” *Farmer*, 511 U.S. at 835. Thus,

[a] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This approach comports best with the text of the Eighth Amendment as our cases have interpreted it. The Eighth Amendment does not outlaw cruel and unusual “conditions”; it outlaws cruel and unusual “punishments.” An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. . . . But an official’s failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.

Id. at 837-38 (emphasis added; citations omitted); *see also Garretson v. City of Madison Heights*, 407 F.3d 789, 796 (6th Cir. 2005) (“If the officers failed to act in the face of an obvious risk of which they should have known but did not, then they did not violate the Fourteenth Amendment.”). The subjective component must be evaluated for each defendant individually. *Bishop v. Hackel*, 636 F.3d 757, 767 (6th Cir. 2011); *see also id.* at 768 (“[W]e must focus on whether each individual Deputy had the personal involvement necessary to permit a finding of subjective knowledge.”).

The complaint does not allege that either Defendant actually perceived that Plaintiff needed medical attention on June 27, 2013, and consciously disregarded that risk. There is no allegation that Plaintiff was suffering from any obvious physical injuries at that time. Plaintiff also does not allege that he notified Defendants of any injuries that might not have been obvious. The only allegation is that the other inmate involved in the fight was sent to the infirmary and Plaintiff was

not. That is insufficient to establish an Eighth Amendment claim based on deliberate indifference to a serious medical need.

Plaintiff's allegation that he was not sent to the infirmary does not allege a viable Equal Protection claim. The Fourteenth Amendment provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1.

The purpose of this provision is "to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Sioux City Bridge Co. v. Dakota Cnty.*, 260 U.S. 441, 445, 43 S. Ct. 190, 67 L. Ed. 340 (1923) (internal quotation marks and citation omitted). . . . Equal protection challenges are "typically ... concerned with governmental classifications that affect some groups of citizens differently than others." *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 601, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008) (internal quotation marks and citation omitted). However, the Supreme Court has recognized that a "class-of-one" may bring an equal protection claim where the plaintiff alleges that: (1) he or "she has been intentionally treated differently from others similarly situated"; and (2) "there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000).

United States v. Green, 654 F.3d 657, 650-51 (6th Cir. 2011), *cert. denied*, 132 S. Ct. 1056 (2012).

The complaint does not allege that Plaintiff was discriminated against because of his membership in a protected class. The complaint also does not allege that there was no rational reason for Defendants' decision to send one inmate to the infirmary but not the other.

Therefore, the Court DISMISSES the complaint against Defendants insofar as it asserts claims for failing to send Plaintiff to the prison clinic on June 27, 2013, for failure to state a claim on which relief may be granted, pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1). This dismissal is without prejudice to Plaintiff's right to file a timely amended complaint that cures the deficiencies identified in this order.

Process will be issued for the Defendants on Plaintiff's Eighth Amendment claims against Braden for use of excessive force and against Maharry for failure to protect. It is ORDERED that the Clerk shall issue process for Defendants Braden and Maharry and deliver that process to the U.S. Marshal for service. Service shall be made on Defendants Braden and Maharry pursuant to Federal Rule of Civil Procedure 4(e) and Tennessee Rules of Civil Procedure 4.04(1) and (10), either by mail or personally if mail service is not effective. All costs of service shall be advanced by the United States.

It is further ORDERED that Plaintiff shall serve a copy of every subsequent document he files in this cause on the attorneys for Defendants Braden and Maharry and on any unrepresented Defendant. Plaintiff shall make a certificate of service on every document filed. Plaintiff shall familiarize himself with the Federal Rules of Civil Procedure and this Court's Local Rules.²

Plaintiff shall promptly notify the Clerk of any change of address or extended absence. Failure to comply with these requirements, or any other order of the Court, may result in the dismissal of this case without further notice.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

² A copy of the Local Rules may be obtained from the Clerk. The Local Rules are also available on the Court's website at www.tnwd.uscourts.gov/pdf/content/LocalRules.pdf.